

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
APPELLATE DIVISION**

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff/Respondent

Appellate Number: BR048611

Vs.

 Fields

Case No: LC18300

Defendant/Appellant


APPELLANT  FIELDS OPENING BRIEF

On Appeal from the Superior Court of California - County of Los Angeles

North District – Lancaster Courthouse

Honorable Commissioner Robert A. McSorley Presiding

 Fields, In Pro Per

 Fields


CASE NUMBER; LC18300
People v. Fields

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APPELLANT'S OPENING BRIEF

FACTUAL BACKGROUND AND JUDICIAL PROCEEDINGS

On April 14, 2010 an Automated Enforcement System (AES), operated by the City of Lancaster and the Los Angeles County Sheriffs Department, located at the intersection of 20th St. West and West Avenue L in the City of Lancaster, recorded an alleged violation of Vehicle Code §21453(c). This incident resulted in a Notice of Violation being issued to, and criminal charges filed in court against Appellant. Appellant appeared for arraignment and entered a plea of not guilty. Trial was set for Aug. 13, 2010. Appellant was found guilty of violation of Vehicle Code §21453(c).

STATEMENT OF APPEALABILITY

Los Angeles

This appeal is taken from a judgment of ~~Orange~~ County Superior Court and is authorized by California Code of Civil Procedure §904.1 (a)(1).

ISSUES PRESENTED

1. Agreement between the City Of Lancaster and Redflex Inc. contains language in direct violation of California Vehicle Code §21453.5(g)

Does Vehicle Code §21453.5(g) make it illegal for the City Of Lancaster to operate the Automated Enforcement System under a contract that is based on a neutrality clause?

2. Placement of Automated Enforcement System (AES) warning signs after the intersection is in violation of Vehicle Code §21453.5(a)(1)

Does Vehicle Code §21453.5(a)(1) require placement of warning signs that are clearly visible to approaching traffic from all directions?

3. Requirement that City issue warning notices for thirty days prior to use of Automated Enforcement System (AES) to issue citations.

Does Vehicle Code §21453.5 (b)'s prohibition on operation of an Automated Enforcement System without having first issued warning notices during the system's first 30 days of use apply to each individual intersection approach?

4. Admissibility of evidence purporting to prove City had complied with Vehicle Code §21455.5(b)

Did the People provide adequate foundation for the documents admitted into evidence such that they would fall within any exception to the hearsay rule?

5. Substantiality of evidence supporting the Court's finding that the City had complied with Vehicle Code §21455.5(b).

Did substantial evidence support the Court's finding that the City's had complied with the warning notice requirement of Vehicle Code §21455.5(b)?

STANDARD OF REVIEW

Whether substantial evidence supports the conclusion of the trier of fact. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139 [36 Cal.Rptr.2d 474, 885 P.2d 887]; *People v. Johnson* (1980) 26 Cal.3d 557, 575-577 [162 Cal.Rptr. 431, 606 P.2d 738, 16 A.L.R.4th 1255].)

To be "substantial," evidence must be reasonable, credible, and of solid value. (*People v. Mayfield* (1997) 14 Cal.4th 668, 767 [60 Cal.Rptr.2d 1,928 P.2d 485].)

ARGUMENT

I

THE AUTOMATED ENFORCEMENT SYSTEM (AES) AGREEMENT BETWEEN THE CITY OF LANCASTER AND REDFLEX INC., CONTAINS LANGUAGE IN DIRECT VIOLATION OF CALIFORNIA VEHICLE CODE 21455.5(g)

Vehicle Code §21453.5(g) reads in pertinent part:

(g) (1) A contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include provision for the payment or compensation to the manufacturer or supplier based on the number of citations generated, or as a percentage of the revenue generated, as a result of the use of the equipment authorized under this section.

Vehicle Code §21453.5(g) provides that a contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include a provision for payment of compensation to the manufacturer or supplier based on the number of citations generated or percentage of revenue generated as a result of use of the equipment. The purpose of the statute is to avoid an incentive to the camera operator, as a neutral evaluator of evidence, to increase the number of citations issued and paid through use of the equipment.

The contract at issue provides for payment of a flat monthly fee, but also provides that service fees can be negotiated "down or up, but not to exceed" the monthly rate "if it is determined that fees paid to Redflex exceed net program revenues being realized." The provision that fees can be negotiated up, is meaningless in light of the provision that fees are "not to exceed" the stated monthly rate. However, the possibility that fees could be negotiated "down" if it is determined fees paid to Redflex exceed net program revenues being realized, indirectly ties fees to Redflex to the amount of revenue generated from the program. If insufficient revenue is generated to cover the monthly fee, the fee could be "negotiated down." As such, Redflex has an incentive to ensure sufficient revenues are generated to cover the monthly fee.

II

THE PLACEMENT OF THE AUTOMATED ENFORCEMENT SYSTEM (AES) WARNING SIGNS BY THE CITY OF LANCASTER AFTER THE INTERSECTION ARE IN CLEAR VIOLATION OF CALIFORNIA VEHICLE CODE §21453.5(a)(1).

Vehicle Code §21455.5(a) reads in pertinent part:
(1) Identifies the system by signs that clearly indicate the system's presence and are visible to traffic approaching from all directions, or posts signs at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes.

Photo evidence presented in trial court by the appellant shows that warning signs were placed by the City Of Lancaster on the far side of the intersection in question and are not clearly visible to approaching traffic from all directions and do not clearly indicate the presence of an Automated Enforcement System (AES) as required by California Vehicle Code §21455.5(a)(1).

III
THE REQUIREMENT THAT WARNING NOTICES BE ISSUED FOR THIRTY
DAYS PRIOR TO ISSUING CITATIONS PURSUANT TO VEHICLE CODE
§21455.5(B) APPLIES TO EACH INTERSECTION APPROACH WHERE AN AES IS
INSTALLED.

Vehicle Code 21455.5 reads in pertinent part:
(a) The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, may be equipped with an automated enforcement system if the governmental agency utilizing the system meets all of the following requirements:

(1) Identifies the system by signs that clearly indicate the system's presence and are visible to traffic approaching from all directions, or posts signs at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes.

(2) If it locates the system at an intersection, and ensures that the system meets the criteria specified in Section 21455.7.

(b) Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

a. As used in the statute, the term "system" refers to the electronic and mechanical equipment which is necessary to monitor a particular intersection approach for red light violations.

As used throughout the statute, the term system is used to describe the electronic and/or mechanical equipment installed at an intersection. For example:

First: 21455.5 (a) states: "The limit line, the intersection, or a place designated... may be equipped with an automated enforcement system.... " Here, the statute refers to the limit line, intersection or place designated in the singular, not the plural. This clearly indicates that automated enforcement equipment monitoring each limit line, intersection or place designated constitutes a system in and of itself.

Second: 21455.5 (a)(1) states: "Identifies the system by signs that clearly indicate the system's presence and are visible to traffic approaching from all directions " Here, the statute clearly refers to the presence and use of automated enforcement equipment at a particular intersection. While the statute certainly allows for the placement of signs at only the major endurances to the city, this cannot reasonably be read to mean that the use of AES equipment at several intersections constitutes a single system under the meaning of the statute.

Third: 21455 .5(a)(2) states: "If it locates the system at an intersection, and ensures that the system meets the criteria " Here, the statute clearly indicates that an intersection equipped with automated enforcement equipment constitutes a system.

Fourth: 21455.5(b) states: "Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program." Here, in keeping with the use of the term "system" in the authorizing statute, "system" can only be read to mean each system or intersection at which automated enforcement equipment is to be used to issue citations for red light violations.

Fifth 21455.5 (c) states: "Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system." Here, there is nothing to infer that the term "system" refers to a city's over all automated enforcement program or plan. This section is most reasonable read to mean that a government agency, in cooperation with law enforcement may operate one or several automated enforcement systems. The statute then goes on to define the term "operate".

Additionally, Vehicle Code §21455.7 states: "At an intersection at which there is an automated enforcement system in operation " Again, the terms system and intersection are used in the singular, indicating that a "system" is intended to apply to "an intersection" .

The interpretation of system is consistent throughout the statutory scheme implemented by Vehicle Code 21455.5 *et. seq.* The clear meaning intended by the legislature is that Automated Enforcement System refers to the system in operation at an individual intersection; not the overall use of one or more systems.

The legislature in 2003 rejected an amendment to Senate Bill 780 (2003-2004 Reg. Sess.) which would have expressly provided for the warning period of section 21455.5(b) to occur "during the first 30 days after the first recording unit is installed." The City may dispute the legal value and importance of this fact. However, it clearly shows that Appellant's interpretation of the statute is correct. Otherwise, the legislature would have had no reason to introduce such language as to change the thirty day warning requirement to apply only to the first installation.

b. The term "program" refers to the actions of the City necessary to implement and continue operation of an AES system or systems that may be placed at intersection approaches within the City.

In reading §21455.5(b), the term "program" is used in the context of the actions the city must take to meet the requirements the legislature imposed to gain lawful authority to operate an automated enforcement system and commence its actual enforcement program.

Again, 21455.5(b) states: Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

Taken in context, the terms system and program are not synonymous. The term system refers to a set of equipment necessary to monitor the intersection approach for red light violations, independent of other intersection approaches that may or may not be so equipped. This is in keeping with the "dictionary" definition of the word "system" (see, e.g., Merriam-Webster's Collegiate Dictionary (10th ed.1993) p. 1194). Each set of monitoring equipment (cameras, photo flash lights etc.) constitutes a single system, which does not rely on the functioning of other such systems in order to perform its function.

c. Legislative intent is clear that warning notices are required prior to commencing operation of AES.

The legislature clearly intended that motorists be provided with fair warning that the government intends to use AES technology to enforce red light violations. This is analogous to the requirement set out in Vehicle Code §40800 that police enforcing the traffic laws use marked cars and are in uniform. This is indicated by the requirements that the city hold a public hearing, issue only warning notices for thirty-days prior to issuing citations, post signs and make a public announcement thirty-days prior to issuing citations. The legislature clearly expressed its intent that the driving public not be taken by surprise by the installation and use of an automated enforcement system at each intersection where the city installs such a system.

d. Absent compliance with thirty day warning notice requirement, City exceeded the scope of authority granted by legislature.

The legislature also made it perfectly clear that the authority to operate an AES is contingent upon compliance with §§ 21455.5 (a)(1), (a)(2) and (b). "Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall " The term "prior to" can mean nothing other than its plain meaning and "shall" is defined by Vehicle Code §15: "Shall" is mandatory

Where the police act in excess of the authority granted to them by the legislature, the conviction must be overturned. Just as in *People v. Landis*, the City of Santa Ana and the Santa Ana Police Department exceeded its jurisdiction. (*People v. Landis* (2007) 156 Cal.App.4th Supp. 12, 78Cal.Rptr.3d 267)

e. City would not be burdened or prejudiced if made to comply with warning notice requirement.

If made to comply with the thirty-day warning notice requirement, the City would simply have to stop issuing citations for thirty days, issue warning notices for that period, and resume issuing citations when compliance had been accomplished. The City would likely lose revenue, but this is not a new issue. This Appellate Division has ruled on three separate occasions that the City must issue warning notices for thirty days prior to issuing citations for each camera installation. Out of an abundance of caution, the City should have complied at least four years ago.

II

THE COURT IMPROPERLY ADMITTED EVIDENCE THAT LACKED FOUNDATION AND CONSTITUTED HEARSAY NOT FALLING WITHIN ANY EXCEPTION TO THE HEARSAY RULE

- a. Deputy White's testimony regarding foundation was admitted in spite of the People's failure to lay a foundation for the admissibility of the document he was reading from.

Deputy White's testimony regarding foundation has to be considered People's evidence for the purpose of prosecution of traffic citations. The untitled document that Deputy White read from was not admitted into evidence, but instead was inserted into the record by the court after the fact. This document purports to prove that the City of Lancaster had complied with the various sections of the Vehicle Code which grant statutory authority for the City's operation of its several automated enforcement systems. The document does not contain and neither did Deputy White testify to that fact that the City of Lancaster initiated a warning period that began on a certain date and concluded on a certain date. This warning period is required under VC 21455.5. Absent testimony of a witness with personal knowledge of this warning period or documentation submitted to the court, The City of Lancaster is in violation of VC 21455.5 and any evidence submitted is inadmissible. Appellant objected to the admissibility of the document for lack of foundation and that the document was hearsay. The objection was overruled. (SS page 3, line 9)

People's exhibit 1 should not have been admitted into evidence. First, it could not be admitted as a business record of the City or its AES contractor, Redflex, under Evidence Code §1271. The document is not certified by the custodian of records of either the City of Lancaster, or Redflex.

Evidence Code § 1271 has four requirements that must be met before a document can be admitted under the business records exception to the hearsay rule. There is nothing in the court record to indicate that People's Exhibit 1 met any of the following:

- (a) The writing was made in the regular course of a business;
- (b) The writing was made at or near the time of the act, condition, or event;
- (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
- (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

There was no admissible testimony at trial regarding; when the photos was made, or by whom; that it was made in the regular course of business; or, what the source of the information was. Clearly, Deputy White could not and did not provide a foundation for the admissibility of People's Exhibit 1, as he was not the custodian of records and could not testify as to the documents identity and mode of its preparation.

Evidence Code § 1280 has three requirement that must be met before a document may be admitted under the official records exception to the hearsay rule. There is nothing in the court record to indicate that People's Exhibit 1 met any of the following:

- (a) The writing was made by and within the scope of duty of a public employee.
- (b) The writing was made at or near the time of the act, condition, or event.
- (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

Again, considering the testimony of Deputy White as stated above, there was nothing before the Trial Court that could have, even under the most liberal interpretation of any exception to the hearsay rule, laid a foundation for admitting People's Exhibit 1.

Absent proper foundation for the document, People's Exhibit 1 was inadmissible. (Evidence Code §103(a) . Clearly, Deputy White could not provide a foundation for the document, based on his personal knowledge.

b. The reading of Deputy White's untitled document was allowed by the trial court in spite of the People's failure to lay a foundation for the admissibility of the document. Deputy White's testimony regarding foundation has to be considered Peoples evidence for the purpose of prosecution of traffic citations. The untitled document that Deputy White read from was not admitted into evidence, but instead was inserted into the record by the court after the fact. This document purports to prove that the City of Lancaster had complied with the various sections of the Vehicle Code which grant statutory authority for the City's operation of its several automated enforcement systems. Also this document does not state who wrote it, when it was written, or if it was certified by any other entities involved.

Deputy White's untitled document consists of not only statement concerning the fact that the documents, photographs and video are obtained and kept in the regular course of business at Redflex, but goes beyond that. The document also contains statements of fact as to how the data is processed etc. This information is more that what can be admitted simply as business records. As can be readily seen from Deputy White's testimony concerning the untitled document that no one was available to testify at trial that could provide testimony that would provide a foundation for the information provided in the document. (SS page 2, line 9 - page 3 line 2

Additionally, the trial court was left to wonder which of the three "Co-Custodian's" of records actually prepared the untitled document, if any of them, in fact did. None of the three individuals were present in court to testify about the purported business records, as is required by Evidence Code §1271. Since the untitled document, which purported to provide a foundation for all other exhibits, should have been excluded, then all of the people's documents, photographs and video should have been excluded as well.

III

SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE COURT'S FINDING THAT THE CITY HAD COMPLIED WITH VEHICLE CODE §21455.5(B)

- a. Even if evidence were properly admitted, it does not constitute substantial evidence to support the Court's finding of compliance.

At trial, there was no evidence of the City's compliance with the thirty-day warning mandate.

Prior to issuing citations, the city of Lancaster did not initiate a warning period. Deputy White's testimony certainly does not indicate that the warning period was complied with at the intersection of 20th St. West and West Avenue L, where Appellant received her citation.

Therefore, even if People's untitled document were properly admitted into evidence, the statement purporting to prove compliance with the warning period requirement is not reasonable, credible, and of solid value, and was thus insufficient to support the courts finding that the City had complied with the legislative mandate.

CONCLUSION

The trial court seemed to have ignored the fact that Vehicle Code §21453.5(g) provides that a contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include a provision for payment of compensation to the manufacturer or supplier based on the number of citations generated or percentage of revenue generated as a result of use of the equipment. The purpose of the statute is to avoid an incentive to the camera operator, as a neutral evaluator of evidence, to increase the number of citations issued and paid through use of the equipment.

The only reasonable interpretation of the term system as used in the statute is that it refers to each installation of intersection monitoring equipment at an intersection as a system, separate and apart from other systems that may be in use in the city. As the Courts have ruled in the past, the legislatively mandated thirty-day warning notice requirement of Vehicle Code §21455.5(b) applies to an automated enforcement system installed at each intersection where it is installed. As new systems are installed, the city must issue warning notice for thirty days prior to issuing citation through use of that system.

The evidence presented to the court did not provide sufficient evidence to support a court's finding that the city complied with the thirty-day warning notice requirement at any intersection; and certainly not the intersection of 20th St. West and West Avenue L, as mandated by Vehicle Code §21455.5(b).

People failed to lay a proper foundation for its exhibits, particularly exhibits #1 and the untitled document read by Deputy White and/or inserted into the court record by the trial court. Both of these documents lacked foundation and consisted of hearsay statements that were not subject to any exception to the hearsay rule.

This Court should overturn the conviction.